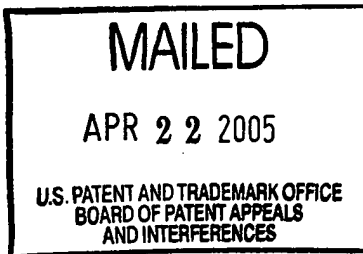


UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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Ex parte ALPHONSE CASSONE

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Application No. 09/619,357

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ORDER RETURNING TO EXAMINER

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This application was electronically received at the Board of Patent Appeals and Interferences on March 15, 2005. A review of the application has revealed that the application is not ready for docketing as an appeal. Accordingly, the application is herewith electronically returned to the examiner. The matters requiring attention prior to docketing are identified below.

On page 2 of the Examiner's Answer mailed February 11, 2004, the examiner listed the following references under the heading "(9) Prior Art of Record":

US 3,585,991

Balamuth

6-1971

Nedwell, European Patent Application EP 0 891 761 A2, published 1-1999.

It is noted that the Alton (5,695,455) and Eakin (5,097,821) references cited on pages 5 and 6 of the Examiner's Answer under the heading "(11) Response to Argument" are not included as "Prior Art of Record." In accordance with § 1211 of the Manual of Patent Examining Procedure (MPEP) (8th Ed., Rev. 2, May 2004), clarification is required regarding the pertinence of the Alton and Easkin references. In addition, MPEP § 1208(A)(9) states:

(A) REQUIREMENTS FOR EXAMINER'S ANSWER. The examiner's answer is required to include, under appropriate headings, in the order indicated, the following items:

. . .

(9) References of Record. A listing of the references of record relied on, and, in the case of nonpatent references, the relevant page or pages.

If appropriate, compliance with MPEP § 1208(A)(9) is required in listing the Alton and Eakin references under the heading "Prior Art of Record" appearing in the Examiner's Answer mailed February 11, 2004.

Section 1208.01 of the MPEP states:

37 CFR 1.193(a)(2) prohibits the entry of a new ground of rejection in an examiner's answer. At the time of preparing the answer to an appeal brief, however, the examiner may decide that he or she should apply a new ground of rejection against some or all of the appealed claims. In such an instance where a new

ground of rejection is necessary, the examiner should reopen prosecution. The examiner must obtain supervisory approval in order to reopen prosecution after an appeal.

Accordingly, it is

ORDERED that the application is returned to the examiner:

1. for clarification under MPEP § 1211 regarding the pertinence of the Alton and Eakin references listed on pages 5 and 6 of the Examiner's Answer mailed February 11, 2004;
2. if appropriate, for compliance with MPEP § 1208(A)(9) by listing the Alton and Eakin references in a Supplemental Examiner's Answer under the heading "References of Record";
3. for a determination regarding whether a new ground of rejection is warranted and prosecution is to be reopened;
4. for written communication to applicant regarding the action taken; and
5. for such further action as may be appropriate.

BOARD OF PATENT APPEALS  
AND INTERFERENCES

By: 

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DS/psb/lc

Application 09/619,357

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